



In the United States Patent and Trademark Office

Applicant : Mary Ann Caneba
 Appn. No. : 10/002,763
 Filed : Nov. 27, 2001
 Title : Picking Rake
 Grp./A.U. : 3671
 Examiner : Arpad F. Kovaks

Honorable Commissioner for Patents
 Alexandria, Virginia 22313

Date of Mailing: June 23, 2004

Sir:

Attached is the response to the non-final office action sent 05/24/04 regarding the above patent application. The applicant is submitting the following:

1. Claim Amendments - 24 pp.
2. Remarks/Arguments and Request for Reconsideration of Restriction Requirement- 28 pp. of text and 4pp. of drawings
3. Additional Fee for excess number of claims: \$18.00

To date, the applicant has paid for 33 claims, 11 of which are independent. The attached claim amendments consist of 35 claims, 6 of which are independent. Therefore, the applicant is liable for the excess of 2 total number of claims. This adds up to:

0 independent claims over 11 @ \$43 =	0
2 claims over 33 @ \$ 9 =	18
Total =	\$18

In any case, please bill/refund the applicant for any shortage/overpayment of fees that are due in case the above calculations are not correct.

4. Substance of the Interview on 5/17 and 5/18 - 4pp.

5. Return Postcard

Thank you.

Sincerely yours,

Mary Ann Caneba

Mary Ann Caneba, applicant

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Certificate of Mailing:

I hereby certify that this correspondence and referenced attachments will be deposited with the United States Postal Service by Express Mail, postage prepaid, in an envelope addressed to: Mail Stop Fee Amendments

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

on the date below.

Date: 6/23/04

Inventor's Signature: Mary Ann Caneba



Applicant : Mary Ann Caneba
Examiner : Arpad Kovaks
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**Substance of Telephonic Interview 5/17-18/2004
Between Applicant and Examiner**

At this late stage of patent prosecution proceedings, applicant was initially asked what figures correspond to what claims as specified by the Examiner, namely : 57, 88, 95, 99, 100-104, and 105. The applicant offered the following clarification:

1. Claim 57 correspond to Figs. 1-A through 5-C',
2. Claim 88 is a linking claim (genus) that covers the embodiments (species) in Figs. 1-A through 5-C' and Figs. 6-A and numerous others where a resilient member is used,
3. Claim 95 correspond to Figs. 10-A through 12-B,
4. Claim 99 correspond to a Markush-type grouping of claims 81-87 submitted to satisfy the Examiner's requirement for allowance according to the first OA sent 1/14/04,
5. Claims 100- 104 correspond to another way of writing the claims covered in claim 99 in order to satisfy the Examiner's requirement for allowance (the previous OA stated that claims 81-87 are allowable if written in independent form),
6. Claim 105 correspond to Fig.9-R, one of the handles of the picking rake.

The Examiner thinks that the applicant introduced new embodiments in the application and a restriction is necessary. The Examiner initially decided to restrict to one of several groups. These groups are covered by independent claims 57, 88, 81-87, 95, and 105. The applicant argued that if a linking claim exists and found patentable, more than one embodiment of the picking rake may allowable in the same application. The Examiner agreed.

The applicant pointed out that claim 88 is a linking claim because it has all the elements common to the embodiments in Fig. 1-A and Fig. 6-A. The applicant also asked if it is possible to amend the claims by rewriting claim 57 as a dependent claim to claim 88. The Examiner was not sure if that is possible at this stage and will inquire about it.

The following day, the Examiner said that since Claim 88 is directed towards an embodiment that was not presented for examination in the original RCE filed 10/30/03, it cannot be made an election option pursuant to MPEP 821.03. The applicant is left to elect between two groups of claims - claims 57-61 and claims 81-87.

The applicant argued that claim 88 is not new matter and that the equivalent of claim 88 was indeed presented in the original RCE as claim 64, dependent on parent claim 62. (Both claims 62 and 64 are already canceled and incorporated into claim 88. Page 20 of the remarks and arguments section of the response to the first OA sent 4/13/04 clearly stated this.) Claim 88 and claim 64 both cover the same elements. Therefore, Claim 88 and its dependent claims should be included as an election option for further examination. The Examiner then said he would look into it very briefly and issue a restriction

requirement right away. The applicant can argue against the restriction requirement in the response.

Please note that some of the information above may not be consistent to the Examiner's own Substance of the Interview and the conclusions derived from the interview. These are:

1. Claims 81-87 and 99-104 pertains to a broader way of claiming a non-detachable embodiment of the picking rake like that shown in Fig. 1-A through Fig. 2-C. Figs. 3-A through 5-C' shows the other possible non-detachable connections in addition to those shown in Fig. 1-A through 2-C. The specifications clearly state this. **The applicant did not point out that claims 81-87 and 99-104 pertains solely to Fig. 3.** The claims are directed to a rake with a connecting means taken from several options and not directed to the connection means.
2. **Claim 88 may be also directed to Fig. 8 and 9 (embodiment of claim 93), among others, because claim 88 is a parent claim of claim 93.** But the applicant also pointed out that claim 88, being a linking claim is also directed towards both Fig. 1-A and Fig. 6-A because all the elements in claim 88 are common to both of them. The applicant did not have the chance to explain that a dependent claim covering the embodiment in Fig. 1-A was not necessary because an equivalent claim 57 is already found allowable. The applicant earlier offered to rewrite claim 57 as a dependent claim to claim 88.
3. **Claims 105 and 78 do not pertain to Fig. 41-A.** It pertains to a handle of the detachable version of the picking rake, depicted in Fig. 9-R. Fig. 41-A is just

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one of the ways a handle can be made telescoping - retracted when picking and extended when raking. That is to be considered when examining just the dependent claim 79.

4. **Claim 68 was not discussed in the interview.** The Examiner stated in his interview summary that claim 68 (dependent to parent claim 62) is directed towards claim 57. Why is it then that there was no mention of claim 69 (also dependent on parent claim 62) as being directed towards an embodiment shown in Fig. 6-A. In this regard, claims to embodiments shown in Figs. 1-A and 6-A are indeed present in the original RCE.
5. **The applicant did not introduce new embodiments.** No new figures were presented since the original application. The figures sent with the response to the first OA sent 4/13/04 are provided to aid the Examiner in understanding the applicant's arguments regarding the patentability of the invention. Any specification amendment submitted was for the purpose of changing the names of parts in order to make the specs consistent with those the claims. Furthermore, the substance of the new claims is essentially the same as the canceled ones in the original RCE, only made clearer and narrower to distinguish further over prior art and to satisfy the Examiner's own requirements for allowance.

Mary Ann Canella 6/23/04
(Applicant)